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IN THE

Supreme Court of the United States

October Term, 1950

No. 589

GERTRUDE A. FARNSWORTH, JAMES D. CARPENTER, and ROBERT M. SHARPE, Executors under the Will of DANIEL W. FARNSWORTH, and GERTRUDE A. FARNSWORTH,

Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

REPLY BRIEF FOR PETITIONERS.

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Cases Cited.

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Flood v. *United States*, 133 F. 2d 173 (1st Cir. 1943)	2
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REPLY BRIEF FOR PETITIONERS.

If the facts were as presented in respondent's brief, we would not have filed a petition for certiorari.

The uncontradicted, determinative facts, which are not mentioned in respondent's brief, are:

1. The New York State Tax Commission recovered judgment against Daniel W. Farnsworth for the *full amount* of the unincorporated business taxes for the year 1940 through 1949, totalling $143,388.61, but entered judgment against his other partners only for the taxes due in the years in which they were severally members of the partnership (Exhibit 20-T, five judgments).

2. The other partners claimed they were not subject to taxation (69a) and would not pay the taxes (70a-101a) because they felt they were not liable for them. They had counsel of their own to protect their interests (95a).

3. Farnsworth, who had suffered a heart attack in January, called a conference of his partners at his home in

April (69a), to advise them that he would assume the entire responsibility of paying the taxes if they would cooperate with him in effecting a settlement (78a). He said that if the taxes had not been compromised, the effect on his business would have been "rather disastrous"; that if he had continued in that state of mind, he would have been rendered incapacitated to carry on his business; and that if he had had to pay the taxes in a lump sum, it would have meant ruin to his business (70a-71a). At the end of the conference, he told his partner Egan to contact Lord, Day & Lord and have the taxes settled, and he would assume the payment of the entire tax (80a). Mr. Baker of Lord, Day & Lord testified that after that conference the partners, through their counsel, did cooperate in negotiating settlement (101a-102a), and a settlement agreement was negotiated which permitted the payment of the taxes in installments over a period of three years. As part of their "cooperation", his partners (including those not amenable to process or execution in New York) executed confessions of judgment for the whole amount of unincorporated business tax, including interest and penalties. Farnsworth borrowed the money to pay the taxes (73a).

These are the uncontradicted facts which show that the judgment below is in conflict with the decision of the Sixth Circuit in *Siarto* v. *Commissioner*, 171 F. 2d 293 (1948) and the First Circuit in *Flood* v. *United States*, 133 F. 2d 173 (1943) and which show that the Court below erroneously interpreted this Court's decision in *Magruder* v. *Supplee*, 316 U. S. 394 (1942).

It is respectfully submitted that a writ of certiorari should issue as prayed for.

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